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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,584	10/31/2003	Patrick J. Treado	E2079-00013	1644
41396	7590	07/05/2006	EXAMINER	
DUANE MORRIS LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			PRITCHETT, JOSHUA L	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/698,584		TREADO ET AL	
	<b>Examiner</b>		<b>Art Unit</b>	
	Joshua L. Pritchett		2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

This action is in response to Request for Continued Examination and Amendment filed June 14, 2006. Claims 1, 41 and 42 have been amended as requested by the applicant.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 10, 12-16, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Batchelder (US 5,689,333) as evidenced by Rigler (US 2004/0114224).

Regarding claims 1, 41 and 42, Batchelder discloses an apparatus comprising a light source (10) for illuminating a specimen (4; Fig. 1); light gathering optics for gather light reflected from the specimen (Fig. 1); an electronically tunable filter (84) for transmitting light of specific, selected wavelengths (Fig. 1; col. 4 lines 49-55); an image sensor (12) for sensing an image, the image sensor having a predetermined number of pixels (col. 8 lines 5-6); a computer (120), the computer being coupled to the electronically tunable filter and the image sensor (col. 4 lines 49-55; Fig. 1) software running on the computer (col. 10 line 53) tuning the electronically tunable filter to a specific wavelength or a series of specific wavelengths (col. 4 lines 49-55) and

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collecting and storing the intensity of the reflected light at each of the pixels for each of the specific wavelengths to which the electronically tunable filter is tuned (col. 10 lines 52-65; Figs. 4-6). Batchelder further discloses the use of the apparatus in fluorescent spectroscopy (col. 1 lines 13-18). Although Batchelder does not discuss the type of forensic specimen, the specimens listed in claims 1, 41 and 42 include specimens that can inherently be used in fluorescent spectroscopy. The inherency is shown by evidence in Rigler (US 2004/011424), which states that fluorescent spectroscopy can be used to examine body fluids (para. 0002). The oils that produce fingerprints can be considered bodily fluids. Blood, semen and saliva are also bodily fluids as are the pigments that color the body's skin. Further these different specimen have been disclosed as functional equivalents in the current specification. Still further the Batchelder reference teaches all the claimed structural limitations of the current invention and would therefore be able to perform any claimed functional limitation of the current invention including the type of specimen analyzed.

Regarding claim 2, Batchelder discloses the light source is incident to the specimen (Fig. 1).

Regarding claim 3, Batchelder discloses the light source emits a specific wavelength or range of wavelengths (col. 3 lines 50-67).

Regarding claim 4, Batchelder discloses the light gathering optics comprise a microscope lens (20).

Regarding claim 5, Batchelder discloses the light gathering optics comprise a macro lens (34).

Regarding claim 9, Batchelder discloses the image sensor is a two-dimensional imaging focal plane array (Fig. 8; col. 9 lines 20-22).

Regarding claim 10, Batchelder discloses the image sensor is a charge coupled device (Fig. 1).

Regarding claim 12, Batchelder discloses one or more mirrors for spatially directing the light reflected by the specimen (Fig. 1).

Regarding claim 13, Batchelder discloses an optical train disposed between the light gathering optical and the electronically tunable filter for matching the spatial characteristics of the light reflected by the specimen to the tunable filter (Fig. 1).

Regarding claim 14, Batchelder discloses a display device for rendering images and graphical representations of the specimen (Figs. 4-6).

Regarding claim 15, Batchelder discloses the software performs the function of composing an image for rendering on the display, the image composed of light reflected by the specimen at a specific wavelength or range of wavelengths to which the tunable filter has been tuned (col. 8 lines 58-60).

Regarding claim 16, Batchelder discloses the software performs the function of composing a graphical representation of the specimen, being a graph of intensity versus wavelength for specific pixels or groups of pixels (Figs. 4-6; col. 10 lines 50-65).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Batchelder (US 5,689,333) as evidenced by Rigler (US 2004/0114224) in view of Treado (US 6,002,476).

Batchelder as evidenced by Rigler teaches the invention as claimed including the use of tunable filter bandwidth ranges from  $5\text{ cm}^{-1}$  to 10 nm (Fig. 4). Batchelder lacks reference to liquid crystal tunable filters or acousto-optic tunable filters. Treado teaches the use of liquid crystal tunable filters (LCTF; 11 Fig. 1) and acousto-optic tunable filters (col. 1 lines 48-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Batchelder tunable filter include either a liquid crystal tunable filter or an acousto-optic tunable filter for the purpose of accurately and precisely filtering desired bandwidths with known technology to yield predictable results.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Batchelder (US 5,689,333) as evidenced by Rigler (US 2004/0114224) in view of Fillard (US 5,770,856).

Batchelder as evidenced by Rigler teaches the invention as claimed but lacks reference to a gallium arsenide detector. Fillard teaches the use of a gallium arsenide detector to collect light (col. 2 lines 55-56). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to have the Batchelder invention include the gallium arsenide detector of Fillard for the purpose of accurately and precisely collecting light with known technology to yield predictable results.

### ***Response to Arguments***

Applicant's arguments filed June 14, 2006 have been fully considered but they are not persuasive.

Applicant argues there is no support for the examiner's position that Batchelder can be used with any specimen. The examiner does not take the position that Batchelder can be used with any specimen. However, Batchelder is capable of use with specimens listed in the claim language or functional equivalents thereof. The examiner has provided support for this position through the use of the Rigler reference as stated in the rejection above.

Applicant argues the filter-wheel described in Batchelder is susceptible to image drift. There is no limitation in the claim language that would prevent the use of the filter-wheel of Bathelder to meet the current claim limitations. Further, Batchelder states that the filter does not move constantly (col. 4 lines 48-59) so image drift would only be a problem for extremely short intervals while the filter is moved into place. The examiner believes once the wavelength filter on the filter-wheel is selected and placed in the beam path image drift would not be a problem.

Applicant argues it is not possible for Batchelder to provide simultaneously high spectral resolve power and large free spectral range. This is not present in the claim language therefore this argument is moot.

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Applicant argues the Batchelder and Treado references use Raman scattered light and the current claims are used for reflected, emitted, transmitted and scattered light. The claim language states, "light gathering optics, for gathering light reflected, emitted, transmitted **or** scattered from said specimen." (Emphasis added) The use of the term **or** in the claim language means so long as one of the types of light is satisfied the claim limitation is met. The prior art teaches the use of scattered light as acknowledged by the applicant, therefore the claim limitations are satisfied.

### *Conclusion*

This is a RCE of applicant's earlier Application No. 10/698,584. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however,




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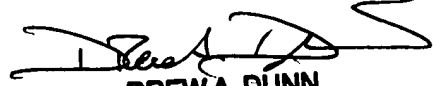
event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L. Pritchett whose telephone number is 571-272-2318. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua L Pritchett   
Examiner  
Art Unit 2872

  
**DREW A. DUNN**  
**SUPERVISORY PATENT EXAMINER**